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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NICK MILETAK,

Plaintiff,

vs.

TURN TECHNOLOGIES, INC.,

Defendant.

Case No. 5:20-cv-9249

California Case No.: 20-CV-374163

**NOTICE OF REMOVAL BY TURN
TECHNOLOGIES, INC. UNDER 28
U.S.C. §§ 1332, 1441, and 1446**

(DIVERSITY JURISDICTION)

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
2 OF CALIFORNIA AND TO PLAINTIFF:

3 PLEASE TAKE NOTICE THAT Defendant Turn Technologies, Inc. (“Turn”), under
4 sections 1332, 1441 and 1446 of Title 28 of the United States Code (the “Judicial Code”), 28
5 U.S.C. §§ 1332, 1441, 1446, removes the state court action described below to this Court.

6 STATEMENT OF JURISDICTION

7 This is a civil action over which this Court has original jurisdiction under section 1332
8 (a)(1) of the Judicial Code, 28 U.S.C. § 1332, and which therefore may be removed to this Court
9 under sections 1441 and 1446 of the Judicial Code, 28 U.S.C. §§ 1441, 1446, as discussed in
10 more detail below.

11 BASES FOR DIVERSITY AND REMOVAL

12 1. Plaintiff Nick Miletak filed an action against Turn on December 2, 2020, in the
13 Superior Court of the State of California, Santa Clara County: *Miletak v. Turn Technologies,*
14 *Inc.*, Case No. 20-CV-374163. On December 10, 2020, Plaintiff emailed Turn a copy of his
15 Summons, Complaint (the “Complaint”), and other papers, but he has not served Turn with the
16 documents. A copy of the papers Plaintiff emailed to Turn is attached as Exhibit A.

17 2. Turn has timely filed this Notice of Removal (“Notice”) under section 1446(b) of the
18 Judicial Code, 28 U.S.C. § 1446(b). The Superior Court of State of California, Santa Clara
19 County, is located in the Northern District of California. *See* 28 U.S.C. § 84(a). Turn has thus
20 properly filed this Notice in this Court under section 1441(a) of the Judicial Code, 28 U.S.C.
21 § 1441(a).

22 3. This Court has original jurisdiction over this suit under section 1332(a)(1) of the
23 Judicial Code, 28 U.S.C. § 1332(a)(1), because the parties are “citizens of different States” and,
24 the “matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.”

25 4. **Diversity.** “For purposes of diversity jurisdiction, an individual is the citizen of the
26 state in which he is domiciled.” *Weight v Active Network, Inc.*, 29 F. Supp. 3d 1289, 1292 (S.D.
27 Cal. 2014). Plaintiff purports to reside in San Jose, California, and is, therefore, a citizen of
28 California. Complaint ¶ 10. “For purposes of determining diversity jurisdiction, ‘a corporation

1 shall be deemed to be a citizen of every State ... by which it has been incorporated and of the
 2 State ... where it has its principal place of business.” *3123 SMB LLC v. Horn*, 880 F.3d 461,
 3 462-63 (9th Cir. 2018) (quoting 28 U.S.C. § 1332(c)(1)). Turn is incorporated in the State of
 4 Delaware, and its principal place of business is located in the State of Illinois. Complaint ¶ 11.
 5 Accordingly, Turn is a citizen of Delaware and Illinois for diversity jurisdiction purposes.

6 **5. Amount-in-Controversy.** The amount-in-controversy for purposes of diversity
 7 jurisdiction is the total “amount at stake in the underlying litigation.” *Theis Research, Inc. v.*
 8 *Brown & Bain*, 400 F.3d 659, 662 (9th Cir. 2005). “[I]n assessing the amount in controversy, a
 9 court must ‘assume that the allegations of the complaint are true and assume that a jury will
 10 return a verdict for the plaintiff on all claims made in the complaint.’” *Campbell v. Vitran Exp.,*
 11 *Inc.*, 471 Fed. Appx. 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Trust v. Morgan*
 12 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). While Turn denies Plaintiff’s
 13 frivolous claims in the Complaint and that Plaintiff is entitled to any of the relief he seeks, the
 14 amount-in-controversy requirement is satisfied if a jury were to return a verdict on all his claims.

15 6. The Complaint brings four separate causes of action: (i) violation of section 1786.29
 16 of California’s Investigative Consumer Reporting Agencies Act (“ICRAA”), Cal. Civ. Code §
 17 1786.29; (ii) violation of section 1786.12(e) of the ICRAA, *id.* § 1786.29; (iii) violation of
 18 section 1786.20(b) of the ICRAA, *id.* § 1786.20(b); and (iv) negligent infliction of emotional
 19 distress (“NIED”). Complaint at 8-14.

20 7. For each statutory claim, Plaintiff requests the greater of the alleged actual damages
 21 he sustained due to Turn’s purported violations of the ICRAA or “[s]tatutory damages [of]
 22 \$10,000.” *E.g.*, Complaint ¶ 31(B); *see also* Cal. Civ. Code § 1786.50 (“An investigative
 23 consumer reporting agency ... that fails to comply with any requirement under [the ICRAA] ...
 24 is liable” for “[a]ny actual damages sustained by the consumer as a result of the failure or, except
 25 in the case of class actions, ten thousand dollars (\$10,000), whichever sum is greater”).
 26 Accordingly, at the very least, Plaintiff is seeking a total of \$30,000 for compensatory damages
 27 related to his statutory claims.
 28

1 8. Plaintiff also seeks, among other relief, punitive damages for each of his statutory
2 claims, *e.g.*, Complaint ¶ 31(C), and unspecified damages for emotional distress for his NIED
3 claim. *Id.* at 13. First, it is “well established that punitive damages are part of the amount in
4 controversy in a civil action,” where they are recoverable under one or more of the plaintiff’s
5 claims for relief. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001). Section
6 1786.50(b) of the ICRAA provides that if “the court determines that the violation was grossly
7 negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive
8 damages.” Cal. Civ. Code § 1786.50(b). Even a small multiple of the compensatory damages
9 Plaintiff requests could satisfy the amount-in-controversy.

10 9. Courts also consider emotional distress damages when analyzing the amount-in-
11 controversy. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (emotional distress
12 damages of at least \$25,000 considered in calculating amount-in-controversy). Plaintiff seeks
13 damages for alleged “emotional distress and humiliation resulting from Defendants [sic]
14 providing an inaccurate [an investigative consumer report] that was solely used in an employer
15 taking adverse action in the form of rescission of an offer of employment.” Jury awards where
16 plaintiffs have proved such damages have exceeded the amount-in-controversy or come close to
17 it *See, e.g., Smith v. LexisNexis Screening Sols., Inc.*, 837 F.3d 604, 612 (6th Cir. 2016)
18 (upholding \$72,360 jury award for emotional distress and reputational harm where a potential
19 employer rejected job applicant due to incorrect criminal information in a background report
20 defendant prepared); *Williams v. First Advantage LNS Screening Sols. Inc.*, 947 F.3d 735, 744-45
21 (11th Cir. 2020) (affirming \$250,000 jury award for emotional distress, lost wages, and
22 reputational harm allegedly resulting from background checks given to potential employers that
23 contained incorrect criminal information).

24 10. When a complaint requests unspecified amounts of “economic damages, emotional
25 distress damages, [and] punitive damages,” it is “appropriate to total the amounts that can be
26 shown, based on the allegations in the complaint, for each of the categories.” *Jackson v.*
27 *Compass Grp. USA, Inc.*, No. CV 19-4678, 2019 WL 3493991 (C.D. Cal. July 31, 2019)
28 (internal citation omitted). The amount-in-controversy is easily satisfied here when totaling the

categories of requested relief outlined above. *Dart Cherokee Basin Operating Co. v. Owens*, 571 U.S. 81, 89 (2014) (“[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”).

NOTICE TO ADVERSE PARTIES AND STATE COURT

11. Per section 1446(d) of the Judicial Code, 28 U.S.C. § 1446(d), Turn will promptly serve Plaintiff with a copy of the Notice to Plaintiff of Filing of Notice of Removal under 28 U.S.C. §§ 1332, 1441, and 1446, in the form of Exhibit B, which is incorporated by reference.

12. Under section 1446(d) of the Judicial Code, 28 U.S.C. § 1446(d), Turn is also filing in the Superior Court of the State of California, Santa Clara County. It will serve the same on Plaintiff, a Notice of Superior Court of Filing of Removal under 28 U.S.C. §§ 1332, 1441, and 1446, in the form of Exhibit C, which is incorporated by reference.

* * * * *

WHEREFORE, Turn, pursuant to sections 1332, 1441, and 1446 of the Judicial Code, 28 U.S.C. §§ 1332, 1441, 1446, removes this suit to United States District Court for the Northern District of California from the Superior Court of the State of California, Santa Clara County.

Dated: December 21, 2020

Respectfully submitted,

MAYER BROWN LLP

By: /s/ Sarah E. Reynolds
Sarah E. Reynolds

Counsel for Defendant
TURN TECHNOLOGIES, INC.